IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/01/2003

CORAM

THE HON'BLE MR. JUSTICE A.K. RAJAN

Second Appeal No.20 of 2003

Basha Sahib .. Appellant

-Vs-

1. Valikandapuram Village,
Kasi Visvanathaswamy Koil,
represented by its villagers
of Sellamuthu.

2. V.Krishnaswamy

3. Valikandapuram Government
High School,
rep. by Headmaster.

4. Chief Educational officer,
Perambalur.

5. Syed Abdul Raboof Sahib

6. Arulmighu Kasi Viswanathasamy
Koil, Valikandapuram, rep. by
Executive Officer. .. Respondents

Appeal filed against the judgment dated 30.4.2002 made in A.S.No.79 of 2000 by the Additional District Judge-cum-Chief Judicial Magistrate, Perambalur, as stated therein.

!For Appellant : Mr. S.Parthasarathy
for M/s. Sarvabhauman Associates

^For Respondent: ---

:J U D G M E N T

Second Appeal is filed by the third defendant. The respondents-1 and 2 herein and one Sellamuthu (since deceased) filed the suit in representative capacity praying for declaration that the suit property belonged to Kasiviswanathasamy Temple and also for permanent injunction.

2. The case of the plaintiff is that the suit property originally belonged to Kasiviswanathasamy Temple. First plaintiff's father Appavu Padaiyachi was managing the properties as well as the temple. In order to establish a high school in Valikandapuram village, the Village Committee requested the father of the second plaintiff/second respondent herein to hand over the property to the Village Committee; Committee also promised that some other property would be purchased in name of the temple by the Committee. Therefore, on 2.6.1966, the suit property was transferred in the name of the second plaintiff. But, no property was purchased in the name of the temple, as promised; no high school was established; the high school is run in the same place where the elementary school was run. The possession of the property was not handed over either to the Village Committee or to the school. The property has been leased out by third plaintiff to Kannusamy Gounder and Narayanan. The defendants have no right or interest over the property. But they are trying to interfere with the possession of the suit property. The suit has been filed by the plaintiffs in the capacity as worshippers of the Kasiviswanathasamy Temple.

3. In the written statement filed by the defendants, it is stated that the suit property was conveyed in the name of the Chairman of the Committee, the second plaintiff on 2.6.1966. Thereafter, the second plaintiff sold the property by Sale Deed dated 26.2.1968 in favour of Tiruchirapalli District Education Officer. The entire property is now under the control of the school. The management of the school is in possession of the property. A portion of the property is used as play ground. The plaintiffs have no interest or right over the property. On 6.8.1993, the first plaintiff attempted to plough the land; that was prevented by the head master; that resulted in law and order problem. Therefore, the suit has to be dismissed.

4. Considering the evidence adduced before the trial Court, the trial Court dismissed the suit on the ground that the property was vested in the Government Education Department and since the Education Department has not been added as a party, the suit is bad for non-joinder of parties.

5. Against the dismissal of the suit, the plaintiffs preferred an appeal before the District Court at Perambalur. The Appellate Court set aside the judgment and decree of the trial Court and decreed the suit, as prayed for. Against the decreeing of the suit, the third defendant has preferred the second appeal. Learned counsel appearing for the appellant submitted that the property has been conveyed as early as on 2.6.1966 by Ex.B.1 by Appavu Padaiyatchi who was the Manager of the temple in favour of the Chairman of the Committee. Subsequently, the Chairman of the Committee (second plaintiff) settled the property in favour of the Government Education Department by Ex.B.2 in the year 1968. From that date onwards, possession of the property was with the Education Department. The plaintiff has no right or interest or locus standi to file the suit. The counsel argued that the suit has been filed by the worshippers and not by the trustees or by the H.R.& C.E. Board. Therefore, the suit as filed is not maintainable. But the Appellate Court has held the suit is maintainable; that decision is liable to be set aside.

Learned counsel also submitted that the ground on which the suit is filed is the promise that some other property would be purchased in lieu of the property which had been settled was not fulfilled. Since the possession is with the defendants from 1968, the suit cannot be filed.

6. The suit has been filed in the representative capacity on behalf

of the worshipppers of the Valikandapuram Kasi Viswanathasamy Temple. Therefore, the suit has been filed not by the individuals, but in the representative capacity representing the worshippers of the temple in the village of Valikandapuram. This Court in AMIR JAN v. SHAIK SULAIMAN AND OTHERS (1968 M.L.J. 559) has held that,

" .....it is open to any worshipper to maintain a suit even for possession, if there is no lawful trustee. "

In another case in CHANDRASEKARAN PILLAI AND OTHERS v. MUTHU BOGI AND OTHERS (1969 M.L.J. 643), this Court has held,

" ..there is no objection to a worshipper taking steps to regain possession of the property belonging to a trust which is in the possession of a trespasser, if the trustee has not taken any steps to recover possession of the property. "

The lower Appellate Court relying upon these two judgments has held that the suit as filed is maintainable. There is no reason to set aside this finding. Hence, this finding that the suit is maintainable is legally correct.

7. Further, the suit property is the property of the temple. Therefore, neither the trustee nor the manager of the temple has any right to sell the property to any other person. If at all only with the permission of the Commissioner, H.R.& C.E. Board, such a sale can be effected. Admittedly, the Commissioner of H.R.& C.E., has not conveyed the property nor the property was conveyed by the second plaintiff with the permission of the Commissioner. Therefore, Ex.B.1 sale deed relied upon by the defendant has no validity at all. The sale deed is sham and nominal, inasmuch as it has been executed by the person other than the person competent to sell the property. Therefore, no rights flow from Ex.B.1. Consequently, Ex.B.2 by which the property was settled in favour of the Education Department is also sham and nominal. A person who does not possess any right cannot convey that right. Therefore, no rights flow either by Exs.B.1 or B.2. The lower Appellate Court has rightly concluded that Exs.B.1 and B.2 do not convey the right over the property.

8. The documents filed in support of the plaintiffs' case, viz., adangal registers maintained by the Revenue Department shows that the property is possessed by the temple. Therefore, the argument that the defendants are in possession of the property cannot be accepted. Hence, the judgment of the first Appellate Court decreeing the suit is perfectly legal and valid. There is no substantial question of law involved. Hence, the Second Appeal is dismissed. No costs.

27.1.2003.

Index: Yes
Web Site: Yes
vs